

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11471-RGS

PATRA, LLC., and
ILIAS GIANNAKOPOULOS

v.

MOTIVA ENTERPRISES, LLC

MEMORANDUM AND ORDER
ON DEFENDANTS' MOTION TO DISMISS, WITH PREJUDICE,
COUNTS V AND VII

September 29, 2005

STEARNS, D.J.

On June 23, 2005, Ilias Giannakopoulos and the franchise service station he operates, Patra, LLC., brought this Complaint against the franchisor, Motiva Enterprises, LLC, and its real estate manager, Steve Santoro, alleging breach of contract, breach of fiduciary duty, and a violation of Chapter 93A. The Complaint seeks to compel specific performance of an alleged agreement on the part of Motiva to sell to plaintiffs the property associated with the service station. Plaintiffs also seek to prosecute a class action challenging Motiva's general business practices. On August 22, 2005, defendants filed a motion to dismiss the class action allegations and plaintiffs' claim for breach of fiduciary duty.

The motion will be ALLOWED with prejudice as to the breach of fiduciary duty claim. Davidson v. General Motors Corp., 57 Mass. App., Ct. 637, 643 (2002) ("[A] business relationship is not transformed into a fiduciary relationship merely because trust was

reposed by one party in the other party.”). The motion is otherwise DENIED as defendants’ motion to dismiss the putative class action is premature. The court will address the merits of the class action within the context of a motion for class certification under Fed. R. Civ. P. 23.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE